

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JORNAY RECHURND RODRIGUEZ,)	
)	
Petitioner,)	Case No. CV 12-7277-GW(AJW)
)	
vs.)	
)	
E. VALENSUELA, Warden,)	MEMORANDUM AND ORDER
)	DISMISSING PETITION
Respondent.)	
)	

Background¹

In 1997, petitioner was convicted of first degree murder in Los Angeles County Superior Court Case No. BA131909. [Petition at 2]. He was sentenced to state prison for a term of 25 years to life. [Petition at 2].

In 2002, petitioner filed a habeas petition in this Court challenging his 1997 conviction. Case No. CV 02-8484-FMC(CT). The petition was denied on the merits on May 7, 2003. The Ninth Circuit Court of Appeals denied petitioner's application for a certificate of appealability.

¹ Some of the following facts are obtained from the Court's files concerning petitioner's prior petitions. The Court takes judicial notice of such official court files. See Fed. R. Civ. P. 201; Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001).

1 Petitioner filed a second petition challenging his 1997
2 conviction. Case No. CV 08-6806(FMC)(CT). That petition was dismissed
3 as successive on November 4, 2008.

4 The present petition was filed on August 23, 2012. Like the
5 petition previously filed by petitioner, this petition challenges the
6 validity of petitioner's 1997 conviction and sentence in the Los
7 Angeles County Superior Court. [Petition at 2].

8 A federal court must dismiss a second or successive petition that
9 raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1). A
10 federal court must also dismiss a second or successive petition raising
11 a new ground unless the petitioner can show that (1) the claim rests on
12 a new, retroactive, constitutional right or (2) the factual basis of
13 the claim was not previously discoverable through due diligence, and
14 those new facts establish by clear and convincing evidence that but for
15 the constitutional error, no reasonable factfinder would have found the
16 applicant guilty of the underlying offense. 28 U.S.C. §
17 2244(b)(2)(A)-(B). It is not the district court, however, that decides
18 whether a second or successive petition meets the requirements
19 permitting a petitioner to file a second or successive petition.
20 Rather, "[b]efore a second or successive application permitted by this
21 section is filed in the district court, the applicant shall move in the
22 appropriate court of appeals for an order authorizing the district
23 court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see
24 Felker v. Turpin, 518 U.S. 651, 656-657 (1996). Absent authorization
25 from the Court of Appeals, this Court lacks jurisdiction over this
26 second or successive petition. Greenawalt v. Stewart, 105 F.3d 1268,
27 1277 (9th Cir.), cert. denied, 519 U.S. 1102 (1997).

1 Because petitioner has not obtained leave from the Court of
2 Appeals to file a successive petition, this court lacks jurisdiction to
3 consider it. Accordingly, the petition for a writ of habeas corpus is
4 dismissed for lack of jurisdiction.

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6 Dated: August 29, 2012

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George H. Wu
United States District Judge

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 JORNAY RECHURND RODRIGUEZ,)
12)
13 Petitioner,) Case No. CV 12-7277-GW(AJW)
14 vs.)
15 E. VALENZUELA, Warden,) JUDGMENT
16 Respondent.)
_____)

17
18 It is hereby adjudged that the petition for a writ of habeas
19 corpus is dismissed for lack of jurisdiction.

20 Dated: _____
21

22 _____
23 George H. Wu
24 United States District Judge
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